IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Criminal Writ Petition No.942 of 2005.

Juber Ahmed @ Guddu Shabbir
Ahmed Khan,
34 yrs, R.O.Social Nagar,
Nurulhudda Masjid,
Hussain Chawl Committee,
B-192, 8/9, Dharavi,
Mumbai 400 017 .. Petitioner

versus

Shri A.M.Roy,
Commissioner of Police,
Gr.Mumbai & Others .. Respondents

Shri U.N.Tripathi for the Petitioner
Shri D.S.Mhaispurkar, APP for the State.

Criminal Writ Petition No.943 of 2005.

Abdul Jafar @ Jafar Lightwala Abdul
Sattar Khan
34 yrs, R.O.Social Nagar,
Madina Chawl, Room No.175
Near Nurulhudda Masjid,
Dharavi,
Mumbai 400 017 .. Petitioner

versus

Shri A.M.Roy,
Commissioner of Police,
Gr.Mumbai & Others .. Respondents

Shri U.N.Tripathi for the Petitioner
Shri S.R.Borulkar, PP for the State.

CORAM: S.B.MHASE &
S.R.SATHE, JJ.

DATE : 29th Aug, 2005

JUDGMENT (Per S.R.Sathe, J.)

1. These are the petitions under Article 226 of the Constitution of India, whereby the respective Petitioners have taken exception to the order of detention passed by the Respondent No.1, the Commissioner of Police, Brihan Mumbai against the petitioners on 7.2.2005 in exercise of the powers conferred by Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords Bootleggers, Drug Offenders and Dangerous Persons Act, 1981.(for the sake of convenience hereafter referred to as " the said Act".)

2. Both the above mentioned petitioners are involved in C.R.No.227 of 2004, registered for the offences punishable under section 326, 452, 506(ii), 34 of I.P.C. and Section 27(a) of Bombay Police Act r/w. Section 4 & 5 of Arms Act. They were also involved in the incident narrated by witness A, whose statement is recorded on 17.12.2004 in respect of the incident occurred in the second week of October 2004 as well as in the incident occurred in the third week of October 2004 about which Witness B gave statement on 19.12.2004 As the above mentioned petitioners who are co-accused/co-associates, involved in the same case, these petitions are being disposed of by this common judgment.

3. The detention order passed by the Respondent No.1 against each of the Petitioner dated 7.2.2005 is based on one C.R. and two in camera statements. One Yusuf Miya Kayub Shaikh filed complaint involving the above mentioned two accused persons with regard to the incidence dated 9.11.2004 and 10.11.2004. On the basis of the said complaint C.R.No.227 of 2004 was registered against the above mentioned petitioners for the offences mentioned earlier. Both the petitioners were arrested on 23.11.2004 in connection with the said C.R. and both of them were finally released on bail. Thus, on the day when the detention order was passed, they were on bail.

4. When confidential enquiries were made by the Police regarding the Criminal Activities carried out by the Petitioners in the locality of Dharavi, it was found that they had victimised many people in the past and they had in fact created a region of terror in the above area and became dangerous to the life and property of the people residing in the said localities of Sangam Galli, M.G.Road, Social Nagar, 90 feet Road, Macchi Galli, Dharavi and areas adjoining thereto. The above position was reflected from the two in camera statements mentioned above. So far as the Petitioner

in W.P.No.942 of 2005, Zuber Ahmed is concerned, he was previously detained under the said Act and was released on 7.11.1999 after completion of the detention period. A chapter proceeding under Section 110(e)(g) of Cr.P.C. was also initiated against him and bond for keeping peace and good behaviour was obtained from him on 25.10.2001. After considering all the material placed before the Respondent No.1 by the sponsoring authority, the Respondent No.1 was subjectively satisfied that the Petitioner's activities were prejudicial to the maintenance of Public Order. He, therefore, passed Order of Detention mentioned above against each of the Petitioner and the same was served alongwith grounds of detention on each of the petitioner on 9.2.2005.

5. Though in the petition, the Petitioners have challenged the order of detention passed against them on several grounds, Mr. Tripathi, learned Advocate for the Petitioner has only pressed into service two grounds namely (e) and (f) mentioned in the petition. The same are as follows:

> E. The Petitioner says and submits that the detaining authority has referred to and relied on one/two criminal case registered against the detenu, the details of the incident is narrated in para no.D of the grounds of detention. The petitioners says and submits that if the said incident is closely and minutely examined with proper perspective, by

no stretch of imagination it will be held that as a result of alleged activities of the Petitioner, the detenu public order is disturbed or even tempo of life of society at large is disturbed. It is therefore Sec.3(1) of M.P.D.A.Act, 1981 cannot be attracted. The detention order is illegal and bad in law, ought to be quashed and set aside.

F. The Petitioner says and submits that the detaining authority has referred to and relied on two in camera statements recorded against the detenu whose incidents are narrated in para no C & D of the grounds of detention. If minutely examined by no stretch of imagination it will be held that as a result of alleged activities of the detenu Public Order is disturbed. The detaining authority has not disclosed as to how and what are material before him to prove that even tempo of life of society is disturbed. The order of detention is illegal and bad in law, ought to be quashed and set aside."

6. According to the learned Advocate for the Petitioners, the alleged overt acts committed by the Petitioners mentioned in the C.R.No.227 of 2004 were in fact the acts directed against the individuals and were not subversive of public order and therefore the detention on the ostensible ground of preventing them from acting in a manner prejudicial to public order was not justified. According to him even if the alleged acts mentioned in the said C.R. and the two in camera statements are taken into consideration, at the most it can be said that the same were likely to affect ‘law and order’ or it had affected law and order but it had not affected the ‘public order’. As against this, the

learned PP Shri S.R.Borulkar and learned APP Shri Mhaispurkar submitted that there was enough incriminating material before the detaining authority to show that the acts of the Petitioners had disturbed the even tempo of the life of the Community and as such the order of detention is legal and valid.

7. In order to find out whether there is any substance in the argument advanced by the learned Advocate for the Petitioners it would be worthwhile to see what Section 3 of the said Act says. It runs as follows:

> 3. (1) The State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.
>
> (2).....
>
> (3).....

. Admittedly, the word "Public Order" is not defined in the said Act. However, there are various authoritative pronouncements of the Apex Court whereby the distinction between disturbance of Public Order and disturbance of law and Order has been made out by the Apex Court. However, at the same time, it has been laid down that there is no litmus test by virtue of

which one can be distinguished from another. The true distinction between the areas of "Law and Order" and "Public Order" lies not merely in the nature or quality of the act, but in the reach of degree and extent of its reach upon the society. It has been often said that the contravention of any law always affects order but before it can be said to effect public order it must effect the community or public at large. In this connection, line of demarcation must be drawn between serious and aggravated forms of disorder which directly affect the community or injure the public interest and the relatively minor breaches of peace of a purely local significance which primarily injure specific individuals and only in a secondary sense public interest. We cannot ignore the fact that the nature of the act, circumstances of its commission, the impact on people around and such like factors constitute the pathology of public disorder. In a case **State of U.P. V/s. Kamal Kishore Saini 1988 Cri.L.J.405 = AIR 1988 Supreme Court 208**, their Lordships of the Supreme Court have observed

> "Considering all these decisions we have held in the case of Gulab Mehra v. State of U.P. (1987) 4JT 559 :(AIR 1987SC 2332).(judgment of this case was pronounced on September 15, 1987) that whether an act relates to law and order or public order depends upon the effect of the act on the life of the community or in other words the reach and effect and potentiality of the

> act if so put as to disturb or dislocate the even tempo of the life of the community, it will be an act which will affect public order."

8. Keeping in mind the above position, we have scanned the material on record which has been relied upon by the detaining authority. One thing is certain that there are offences registered against the Petitioners which are punishable under Chapter 16 or Chapter 17 of I.P.C. and under Section 5of the Arms Act.

9. In their in camera statements the witnesses A & B stated that at the relevant time the petitioners and their associates demanded money and when petitioners expressed unwillingness, they were assaulted at the point of chopper and money was extorted from them by the petitioners. Naturally customers got scared and ran away as they were also threatened. The petitioners made a scene which attracted the attention of several people in the locality. Thus, it is clearly mentioned that the activities of the Petitioner created a region of terror amongst the people in that entire locality and when the businessmen in the said locality used to refuse to accede to the demand of the petitioners, they used to cause damage to their properties and belongings, assault them and their servants. The instances which have been mentioned by the witneses A &

B clearly indicate that as a result of the acts of violence and terror committed by the Petitioners, the shopkeepers and residents ran helter skelter and they even closed their doors and windows and due to fear of retaliation nobody was willing to come forward to lodge complaint with the police. Considering the overt acts committed by the petitioners, mentioned in the in camera statements of witnesses A & B, by no stretch of imagination it can be said that the said acts had only affected the life of those particular victims. On the contrary, all the shopkeepers, businessmen and even residents of these localities got scared. So far as the Petitioner in Criminal Writ Petition 942 of 2005 is concerned, he was in fact once detained under the said act and was released only after expiry of the said period. So, it is needless to say that there was enough material before the detaining authority to show that the Petitioners were infact habitually committing and repeatedly trying to commit offences punishable under Chapter 16 & 17 of I.P.C. and their activities had not only potentiality to disturb the public order but the same had actually disturbed the even tempo of the life of the community.

9. In view of the above position, there is no substance in the argument advanced by the learned

Advocate for the Petitioners. There is no reason to interfere with the orders of detention passed on against the petitioners. Hence both the petitions are dismissed.

. Rule discharged.

(S.R.SATHE, J.) (S.B.MHASE,J.)